

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
SHELL GULF OF MEXICO, INC.)	
Frontier Discoverer Drilling Unit)	OCS Appeal Nos. OCS 10-01
OCS Permit No. R10 OCS/PSD-AK-09-01)	through 10-4
)	
and)	
)	
SHELL OFFSHORE, INC.,)	
Frontier Discoverer Drilling Unit)	
OCS Permit No. R10 OCS/PSD-AK-10-01)	
_____)	

**EPA REGION 10'S PARTIAL OPPOSITION TO SHELL'S REQUEST FOR
PARTIAL RECONSIDERATION**

On December 30, 2010, the Environmental Appeals Board (Board) issued an Order Denying Review in Part and Remanding Permits (Remand Order) in this matter. On January 21, 2011, Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. (collectively, Shell) filed a Request for Partial Reconsideration and for Clarification (Shell's Reconsideration Request) of the Remand Order. In accordance with the Board's January 11, 2011 Order regarding deadlines pertaining to any motions for reconsideration and/or clarification in this matter, U.S. Environmental Protection Agency (EPA) Region 10 hereby files its response to Shell's Reconsideration Request. EPA Region 10 does not oppose Shell's Reconsideration Request to the extent the issues addressed in the Request are similar to those addressed in EPA Region 10's Motion for Reconsideration and/or Clarification, which was also filed on January 21, 2011. Nor does Region 10 oppose Shell's request that the Board reconsider its determination that Region 10 erred in its determination of the OCS source. However, EPA vigorously opposes Shell's

Reconsideration Request in so far as it “asks that the Board revise the [Remand] Order to direct Region 10 to complete its analysis on remand and issue final permit decisions on or before April 15, 2011.” Shell’s Reconsideration Request at 19.

Region 10 opposes Shell's Reconsideration Request because a deadline of April 15, 2011 by which to issue permits on remand is neither necessary nor reasonable. As the facts contained in Shell's Reconsideration Request make clear, *see id.*, the time frames within which Region 10 issued the initial Chukchi and Beaufort permits show that EPA Region 10 has at all times been expeditious in proposing and finalizing these permits and does not need a Board-ordered deadline for issuing the permits in order to continue to do so.¹ Moreover, as explained below, the deadline proposed by Shell is completely unreasonable given the work that Region 10 will need to do on remand, regardless of the outcome of the reconsideration requests. If the EAB affirms its prior decision, the permits will need to be revised in several substantial respects, and if the EAB amends its Remand Order, EPA will not know what might be required or how much time will be necessary until such an amended order is issued. In either case, the April 15 deadline

¹ The request for an April 15, 2011 deadline is based, in part, on Shell’s assertions that EPA Region 10 was able to issue the Beaufort permit in a shorter time frame because the Region “ascended a learning curve regarding OCS air permitting.” Shell’s Reconsideration Request at 19. However, Shell’s request fails to recognize that much of the underlying work on the proposed permit and response to comments for the Beaufort permit was based on the extensive work that had already been completed during the 8-month process for issuing the Chukchi permit, which was issued less than two weeks prior to the Beaufort permit. *See* Response to Comments for OCS/PSD Permit No. R10OCS/PSD-AK-2010-01, Shell Offshore Inc., Beaufort Sea Exploration Drilling Program, dated April 9, 2010 (Beaufort Response to Comments), AR EPA Ex. PP-5 at PP000349 (explaining that EPA recently finalized Chukchi permit and that “many of the commenters submitted comments on the proposed Beaufort permit that repeated the comments they previously made on the proposed Chukchi permit” such that EPA Region 10 “incorporated by reference” the Chukchi permit Response to Comments into the Beaufort permitting record, and referring the public to the Chukchi permit Response to Comments for responses to many issues raised in the Beaufort permitting matter).

requested by Shell effectively precludes the opportunity for any public notice and comment that might be necessary in light of the revisions on remand. In addition, a 60-day time period is completely unnecessary given that Shell has recently announced that it now focusing on beginning the activities to be authorized under the permits in 2012, rather than 2011. *See* Press Release, Shell to Forgo 2011 Drilling in Alaska (February 3, 2011), *available at* http://www-static.shell.com/static/usa/downloads/2010/alaska/release_020311.pdf.

More specifically, the deadline proposed by Shell does not provide sufficient time for Region 10 to respond to the Board's Remand Order given two areas of uncertainty at this time. First, until the Board responds to EPA and Shell's respective Motions for Reconsideration and/or Clarification, there is uncertainty regarding the scope of the issues to be considered by the Region on remand. As the Remand Order currently stands, issuance of the permits on remand will require a demonstration that the permits will meet all requirements that became effective after the initial issuance of the permits and before action taken in response to the remand. *See* Remand Order at 9, 82. EPA Region 10 cannot envision any scenario in which an April 15, 2011 deadline would provide sufficient time to: obtain necessary information from Shell; analyze such information to determine the applicability of such new requirements; assure the remanded permits comply with such requirements (as necessary); meet the public process requirements of 40 C.F.R. Part 124; respond to public comments; and issue final remanded permits.

Second, even if the Board issues a revised Remand Order addressing the concerns identified in Region 10's Motion for Reconsideration and/or Clarification – which would help clarify the scope of the issues that must be addressed on remand and would, in turn, help expedite issuance of final permits in response to the Remand Order – the deadline proposed by Shell is unreasonable because it fails to recognize that aspects of the process

are outside of the control of Region 10. In order to address most aspects of the Board's Remand Order, Region 10 will need additional information from Shell, particularly with respect to consideration of the hourly NO₂ standard in the environmental justice analysis, an aspect of the Order for which neither Shell nor Region 10 have sought reconsideration. Until Shell has submitted the information necessary to address the Remand Order, Region 10 cannot be certain of the time and resources that will be needed to apply that information in a response that fully addresses the Remand Order.

To the extent the Board deems it appropriate to order EPA Region 10 to re-issue permits in response to the Remand Order by a date certain, which Region 10 respectfully requests the Board to decline to do, Region 10 strongly opposes any time frame shorter than six months from the date of any order issued by the Board in response to Region 10's Motion for Reconsideration and/or Clarification and Shell's Reconsideration Request.² Such a time frame will insure that Region 10 has the time necessary to insure that all steps of the remanded permitting process are completed in a manner that fully and adequately addresses the scope of the Board's remand. In addition, if the Board were to revise its Remand Order to include a date certain for responding to the remand, Region 10 respectfully requests that the Board also include a provision for an extension of the deadline upon a showing of good cause by Region 10 regarding the various factors described above.

² In suggesting that a six-month timeframe might be a reasonable time for Region 10 to issue these permits on remand, EPA Region 10 notes that the substantial work on these permits that has already been completed will allow the processing of the permits on remand on an aggressive but feasible six month schedule. Region 10 does not intend in any way to suggest that six months is sufficient time to issue OCS or PSD permits in the future in other cases.

Accordingly, while EPA Region 10 does not oppose most of the issues raised in Shell's Reconsideration Request, EPA Region 10 requests that the Board deny Shell's Reconsideration Request with regard to the request to revise the Remand Order to include an April 15, 2011 deadline for issuing the permits on remand.

Dated this 7th day of February, 2011

Respectfully submitted,

_____/s/_____
Kristi M. Smith
Air and Radiation Law Office
EPA Office of General Counsel

Julie Vergeront
Juliane R. B. Matthews
Assistant Regional Counsel
EPA Region 10

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of EPA REGION 10'S PARTIAL OPPOSITION TO SHELL'S REQUEST FOR PARTIAL RECONSIDERATION to be served by electronic mail upon the counsel listed below.

2/7/11
Date

/s/
Kristi M. Smith
Attorney Advisor
Air and Radiation Law Office
EPA Office of General Counsel

Counsel

Service e-mail

Vera P. Pardee, Kevin P. Bundy,
& Brendan R. Cummings
Center for Biological Diversity

vpardee@biologicaldiversity.org
kbundy@biologicaldiversity.org
bcummings@biologicaldiversity.org

Tanya Sanerib & Christopher Winter
Crag Law Center

tanya@crag.org
chris@crag.org

David Hobstetter, Erik Grafe,
& Eric Jorgensen
Earthjustice

dhobstetter@earthjustice.org
egrafe@earthjustice.org
ejorgensen@earthjustice.org

Duane A. Siler, Susan M. Mathiascheck,
& Sarah C. Bordelon
Crowell & Moring LLP

dsiler@crowell.com
smathiascheck@crowell.com
sbordelon@crowell.com